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SENATE BILL 844

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Timothy Z. Jennings

AN ACT

RELATING TO THE ENVIRONMENT; AMENDING THE HAZARDOUS WASTE ACT  
AND THE GROUND WATER PROTECTION ACT TO EXCLUDE CERTAIN  
PETROLEUM STORAGE TANKS FROM THE DEFINITION OF TANKS SUBJECT TO  
REGULATION UNDER THE ACTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 74-4-3 NMSA 1978 (being Laws 1977,  
Chapter 313, Section 3, as amended) is amended to read:

"74-4-3. DEFINITIONS. -- As used in the Hazardous Waste  
Act:

A. "above ground storage tank" means a single tank  
or combination of tanks, including underground pipes connected  
thereto, that are used to contain petroleum, including crude  
oil or any fraction thereof that is liquid at standard  
conditions of temperature and pressure of sixty degrees

underscored material = new  
[bracketed material] = delete

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1 Fahrenheit and fourteen and seven-tenths pounds per square inch  
2 absolute, and the volume of which is more than ninety percent  
3 above the surface of the ground. "Above ground storage tank"  
4 does not include any:

5 (1) farm, ranch or residential tank used for  
6 storing motor fuel or heating oil for noncommercial purposes;

7 (2) pipeline facility, including gathering  
8 lines regulated under the federal Natural Gas Pipeline Safety  
9 Act of 1968 or the federal Hazardous Liquid Pipeline Safety Act  
10 of 1979, or that is an intrastate pipeline facility regulated  
11 under state laws comparable to either act;

12 (3) surface impoundment, pit, pond or lagoon;

13 (4) storm water or wastewater collection  
14 system;

15 (5) flow-through process tank;

16 (6) liquid trap, tank or associated gathering  
17 lines or other storage methods or devices related to oil, gas  
18 or mining exploration, production, transportation, refining,  
19 processing or storage, or to [the] oil field service industry  
20 operations;

21 (7) tank associated with an emergency  
22 generator system;

23 (8) [~~pipes~~] pipe connected to any tank that is  
24 described in Paragraphs (1) through (7) of this subsection;

25 [~~or~~]

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1 (9) [~~tanks~~] tank or related [~~pipelines~~]  
2 pipeline and [~~facilities~~] facility owned or used by a refinery,  
3 natural gas processing plant or pipeline company in the regular  
4 course of their refining, processing or pipeline business; or

5 (10) above ground storage tank with a capacity  
6 of one thousand two hundred fifty gallons or less that is  
7 composed of two separate compartments of five hundred gallons  
8 or less capacity and is lined and sealed to prevent leaks;

9 B. "board" means the environmental improvement  
10 board;

11 C. "corrective action" means an action taken in  
12 accordance with rules of the board to investigate, minimize,  
13 eliminate or clean up a release to protect the public health,  
14 safety and welfare or the environment;

15 D. "director" or "secretary" means the secretary of  
16 environment;

17 E. "disposal" means the discharge, deposit,  
18 injection, dumping, spilling, leaking or placing of any solid  
19 waste or hazardous waste into or on any land or water so that  
20 such solid waste or hazardous waste or constituent thereof may  
21 enter the environment or be emitted into the air or discharged  
22 into any waters, including ground waters;

23 F. "division" or "department" means the department  
24 of environment;

25 G. "federal agency" means any department, agency or

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1 other instrumentality of the federal government and any  
2 independent agency or establishment of that government,  
3 including any government corporation and the government  
4 printing office;

5 H. "generator" means any person producing hazardous  
6 waste;

7 I. "hazardous agricultural waste" means hazardous  
8 waste generated as part of [~~his~~] the licensed activity by [~~any~~]  
9 a person licensed pursuant to the Pesticide Control Act or  
10 [~~any~~] hazardous waste designated as hazardous agricultural  
11 waste by the board, but does not include animal excrement in  
12 connection with farm, ranch or feedlot operations;

13 J. "hazardous substance incident" means [~~any~~] an  
14 emergency incident involving a chemical or chemicals, including  
15 but not limited to transportation wrecks, accidental spills or  
16 leaks, fires or explosions, which incident creates the  
17 reasonable probability of injury to human health or property;

18 K. "hazardous waste" means any solid waste or  
19 combination of solid wastes that because of their quantity,  
20 concentration or physical, chemical or infectious  
21 characteristics may:

22 (1) cause or significantly contribute to an  
23 increase in mortality or an increase in serious irreversible or  
24 incapacitating reversible illness; or

25 (2) pose a substantial present or potential

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1 hazard to human health or the environment when improperly  
2 treated, stored, transported, disposed of or otherwise managed.  
3 "Hazardous waste" does not include any of the following, until  
4 the board determines that they are subject to Subtitle C of the  
5 federal Resource Conservation and Recovery Act of 1976, as  
6 amended, 42 U.S.C. 6901 et seq.:

7 (a) drilling fluids, produced waters and  
8 other wastes associated with the exploration, development or  
9 production of crude oil or natural gas or geothermal energy;

10 (b) fly ash waste;

11 (c) bottom ash waste;

12 (d) slag waste;

13 (e) flue gas emission control waste  
14 generated primarily from the combustion of coal or other fossil  
15 fuels;

16 (f) solid waste from the extraction,  
17 beneficiation or processing of ores and minerals, including  
18 phosphate rock and overburden from the mining of uranium ore;  
19 or

20 (g) cement kiln dust waste;

21 L. "manifest" means the form used for identifying  
22 the quantity, composition, origin, routing and destination of  
23 hazardous waste during transportation from point of generation  
24 to point of disposal, treatment or storage;

25 M "person" means [any] an individual, trust, firm,

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1 joint stock company, federal agency, corporation, including a  
2 government corporation, partnership, association, state,  
3 municipality, commission, political subdivision of a state or  
4 any interstate body;

5 N. "regulated substance" means:

6 (1) [~~any~~] a substance defined in Section  
7 101(14) of the federal Comprehensive Environmental Response,  
8 Compensation, and Liability Act of 1980, but not including  
9 [~~any~~] a substance regulated as a hazardous waste under Subtitle  
10 C of the federal Resource Conservation and Recovery Act of  
11 1976, as amended; and

12 (2) petroleum, including crude oil or any  
13 fraction thereof that is liquid at standard conditions of  
14 temperature and pressure of sixty degrees Fahrenheit and  
15 fourteen and seven-tenths pounds per square inch absolute;

16 O. "solid waste" means any garbage, refuse, sludge  
17 from a waste treatment plant, water supply treatment plant or  
18 air pollution control facility and other discarded material,  
19 including solid, liquid, semisolid or contained gaseous  
20 material resulting from industrial, commercial, mining and  
21 agricultural operations, and from community activities, but  
22 does not include solid or dissolved materials in domestic  
23 sewage or solid or dissolved materials in irrigation return  
24 flows or industrial discharges that are point sources subject  
25 to permits under Section 402 of the federal Water Pollution

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1 Control Act, as amended, 86 Stat. 880, or source, special  
2 nuclear or byproduct material as defined by the federal Atomic  
3 Energy Act of 1954, as amended, 68 Stat. 923;

4 P. "storage" means the containment of hazardous  
5 waste, either on a temporary basis or for a period of years, in  
6 such a manner as not to constitute disposal of such hazardous  
7 waste;

8 Q. "storage tank" means an above ground storage  
9 tank or an underground storage tank;

10 R. "tank installer" means any individual who  
11 installs or repairs a storage tank;

12 S. "transporter" means a person engaged in the  
13 movement of hazardous waste, not including movement at the site  
14 of generation, disposal, treatment or storage;

15 T. "treatment" means any method, technique or  
16 process, including neutralization, designed to change the  
17 physical, chemical or biological character or composition of  
18 [~~any~~] a hazardous waste so as to neutralize [~~such~~] the waste or  
19 so as to render [~~such~~] the waste nonhazardous, safer for  
20 transport, ~~amenable~~ to recovery, ~~amenable~~ to storage or reduced  
21 in volume. "Treatment" includes any activity or processing  
22 designed to change the physical form or chemical composition of  
23 hazardous waste so as to render it nonhazardous;

24 U. "underground storage tank" means a single tank  
25 or combination of tanks, including underground pipes connected

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1 thereto, that are used to contain an accumulation of regulated  
2 substances and the volume of which, including the volume of the  
3 underground pipes connected thereto, is ten percent or more  
4 beneath the surface of the ground. "Underground storage tank"  
5 does not include any:

6 (1) farm, ranch or residential tank of one  
7 thousand one hundred gallons or less capacity used for storing  
8 motor fuel or heating oil for noncommercial purposes;

9 (2) septic tank;

10 (3) pipeline facility, including gathering  
11 lines that are regulated under the federal Natural Gas Pipeline  
12 Safety Act of 1968 or the federal Hazardous Liquid Pipeline  
13 Safety Act of 1979, or that is an intrastate pipeline facility  
14 regulated under state laws comparable to either act;

15 (4) surface impoundment, pit, pond or lagoon;

16 (5) storm water or wastewater collection  
17 system;

18 (6) flow-through process tank;

19 (7) liquid trap, tank or associated gathering  
20 lines directly related to oil or gas production and gathering  
21 operations;

22 (8) storage tank situated in an underground  
23 area, such as a basement, cellar, mineworking drift, shaft or  
24 tunnel, if the storage tank is situated upon or above the  
25 surface of the undesignated floor;

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1 (9) tank associated with an emergency  
2 generator system;

3 (10) tank exempted by rule of the board after  
4 finding that the type of tank is adequately regulated under  
5 another federal or state law; or

6 (11) [~~pipes~~] pipe connected to any tank that  
7 is described in Paragraphs (1) through (10) of this subsection;  
8 and

9 V. "used oil" means any oil [~~that has been~~] refined  
10 from crude oil, or any synthetic oil, that has been used and as  
11 a result of such use is contaminated by physical or chemical  
12 impurities. "

13 Section 2. Section 74-6B-3 NMSA 1978 (being Laws 1990,  
14 Chapter 124, Section 3, as amended) is amended to read:

15 "74-6B-3. DEFINITIONS.--As used in the Ground Water  
16 Protection Act:

17 A. "above ground storage tank" means a single tank  
18 or combination of tanks, including underground pipes connected  
19 thereto, that are used to contain petroleum, including crude  
20 oil or any fraction thereof that is liquid at standard  
21 conditions of temperature and pressure of sixty degrees  
22 Fahrenheit and fourteen and seven-tenths pounds per square inch  
23 absolute, and the volume of which is more than ninety percent  
24 above the surface of the ground. The term does not include  
25 any:

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1 (1) farm, ranch or residential tank used for  
2 storing motor fuel or heating oil for noncommercial purposes;

3 (2) pipeline facility, including gathering  
4 lines that are regulated under the federal Natural Gas Pipeline  
5 Safety Act of 1968 or the federal Hazardous Liquid Pipeline  
6 Safety Act of 1979, or that is an intrastate pipeline facility  
7 regulated under state laws comparable to either act;

8 (3) surface impoundment, pit, pond or lagoon;

9 (4) storm water or wastewater collection  
10 system;

11 (5) flow-through process tank;

12 (6) liquid trap, tank or associated gathering  
13 lines or other storage methods or devices related to oil, gas  
14 or mining exploration, production, transportation, refining,  
15 processing or storage, or the oil field service industry  
16 operations;

17 (7) tank associated with an emergency  
18 generator system;

19 (8) pipes connected to any tank that is  
20 described in Paragraphs (1) through [~~(8)~~] (7) of this  
21 subsection; [~~or~~]

22 (9) tanks or related pipelines and facilities  
23 owned or used by a refinery, natural gas processing plant or  
24 pipeline company in the regular course of their refining,  
25 processing or pipeline business; or

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1                   (10) above ground storage tank with a capacity  
2 of one thousand two hundred fifty gallons or less that is  
3 composed of two separate compartments of five hundred gallons  
4 or less capacity and is lined and sealed to prevent leaks;

5                   B. "board" means the environmental improvement  
6 board;

7                   C. "corrective action" means an action taken in  
8 accordance with rules of the board to investigate, minimize,  
9 eliminate or clean up a release to protect the public health,  
10 safety and welfare or the environment;

11                   D. "department" means the department of  
12 environment;

13                   E. "operator" means any person in control of or  
14 having responsibility for the daily operation of a storage  
15 tank;

16                   F. "owner" means:

17                         (1) in the case of a storage tank in use or  
18 brought into use on or after November 8, 1984, a person who  
19 owns the storage tank; and

20                         (2) in the case of a storage tank in use  
21 before November 8, 1984 but no longer in use after that date, a  
22 person who owned the tank immediately before the  
23 discontinuation of its use;

24                   G. "person" means an individual or any legal  
25 entity, including all governmental entities;

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1 H. "regulated substance" means:

2 (1) a substance defined in Section 101(14) of  
3 the federal Comprehensive Environmental Response, Compensation  
4 and Liability Act of 1980, but not including a substance  
5 regulated as a hazardous waste under Subtitle C of the federal  
6 Resource Conservation and Recovery Act of 1976; and

7 (2) petroleum, including crude oil or a  
8 fraction thereof, that is liquid at standard conditions of  
9 temperature and pressure of sixty degrees Fahrenheit and  
10 fourteen and seven-tenths pounds per square inch absolute;

11 I. "release" means a spilling, leaking, emitting,  
12 discharging, escaping, leaching or disposing from a storage  
13 tank into ground water, surface water or subsurface soils in  
14 amounts exceeding twenty-five gallons;

15 J. "secretary" means the secretary of environment;

16 K. "site" means a place where there is or was at a  
17 previous time one or more storage tanks and may include areas  
18 contiguous to the actual location or previous location of the  
19 tanks;

20 L. "storage tank" means an above ground storage  
21 tank or an underground storage tank; and

22 M "underground storage tank" means a single tank  
23 or combination of tanks, including underground pipes connected  
24 thereto, that are used to contain an accumulation of regulated  
25 substances and the volume of which, including the volume of the

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1 underground pipes connected thereto, is ten percent or more  
2 beneath the surface of the ground. The term does not include  
3 any:

4 (1) farm, ranch or residential tank of one  
5 thousand one hundred gallons or less capacity used for storing  
6 motor fuel or heating oil for noncommercial purposes;

7 (2) septic tank;

8 (3) pipeline facility, including gathering  
9 lines regulated under the federal Natural Gas Pipeline Safety  
10 Act of 1968 or the federal Hazardous Liquid Pipeline Safety Act  
11 of 1979, or that is an intrastate pipeline facility regulated  
12 under state laws comparable to either act;

13 (4) surface impoundment, pit, pond or lagoon;

14 (5) storm water or wastewater collection  
15 system;

16 (6) flow-through process tank;

17 (7) liquid trap, tank or associated gathering  
18 lines directly related to oil or gas production and gathering  
19 operations;

20 (8) storage tank situated in an underground  
21 area, such as a basement, cellar, mineworking drift, shaft or  
22 tunnel, if the storage tank is situated upon or above the  
23 surface of the undesignated floor;

24 (9) tank associated with an emergency  
25 generator system;

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1 (10) tank exempted by rule of the board after  
2 finding that the type of tank is adequately regulated under  
3 another federal or state law; or

4 (11) pipes connected to any tank that is  
5 described in Paragraphs (1) through (10) of this subsection. "

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